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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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JUL 23 1999

Federal-State Joint Board on Universal
Service;

CC Docket No. 96-45

Access Charge Reform

CC Docket No. 96-262

COMMENTS OF THE VIRGIN ISLANDS TELEPHONE CORPORATION

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SUMMARY

Vitelco supports the general proposal adopted by the Commission to hold states and carriers harmless. It also applauds the FCC's explicit repudiation of the "25/75 split." The adoption of these policies is particularly important in the U.S. Virgin Islands. First, unlike many parts of the mainland, several factors serve to drive up the cost of providing service in the Territory. Second, the lack of any intrastate toll services in the territory makes it difficult, if not impossible, for the Territorial authorities to generate the additional funds needed to cover any reduction in the amount of federal support. Thus, the Commission's policies represent a step in the right direction.

Nevertheless, Vitelco remains concerned that the manner by which the Commission proposes to implement these policies, if applied outside of the non-rural carrier context, would actually fail to be successful in ensuring that carriers serving rural and insular areas receive sufficient universal service support to maintain affordable telephone service as required by Section 254 of the Communications Act. Specifically, Vitelco requests the Commission to take particular care when setting a national cost benchmark, establishing the size of the area over which costs should be averaged, and determining a state's ability to provide its own support. In each of these cases, a one-size-fits-all approach would not capture the unique situation in the Virgin Islands. Vitelco also asks the Commission to ensure that its implementation of the 'hold-harmless' policy and linkage of support to access charges not degrade the ability of carriers to provide services at affordable rates to all.

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The Virgin Islands Telephone Corporation ("Vitelco") hereby submits these comments in response to the Commission's *Seventh R&O and FNPRM* seeking comment on specific issues associated with the implementation of the federal Universal Service programs.¹ Vitelco, as a rural, insular carrier, takes the time and effort to participate in these non-rural carrier proceedings to stress to the Commission that it is important for the FCC not to prejudge the rural and insular proceedings with its findings here. The conditions that rural and insular carriers face are much different from those faced by larger non-rural carriers. Thus, the policies that might be appropriate for one group of carriers are likely not appropriate for another group of carriers. To that end, Vitelco requests that the Commission not merely apply the policies it adopts in this proceeding industry-wide and that the FCC not prejudice its decision-making until it has received

¹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Access Charge Reform, CC Docket No. 96-262, *Seventh Report & Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report & Order in Docket No. 96-262, Further Notice of Proposed Rulemaking*, FCC 99-119 (rel. May 28, 1999) ("*Seventh R&O and FNPRM*").

the input of the Rural Task Force, which it created expressly for the purpose of examining rural issues. By doing so, the Commission will fulfill its obligations under Section 254 of the Communications Act² to ensure that the universal service programs guarantee affordable telecommunications services for *all* Americans and prevent those Americans living in rural and insular areas from being left out of the telecommunications revolution by keeping service affordable and increasing the numbers of people who can obtain those services.

I. BACKGROUND

On May 8, 1997, the Federal Communications Commission (“FCC” or “Commission”) issued its *Universal Service Order* which, among other things, held that the federal universal service fund would provide only twenty-five percent of the difference between a carrier’s forward-looking economic cost of providing supported services and a national benchmark figure for non-rural LECs.³ In response to the *Universal Service Order*, Vitelco joined a diverse group of commenters urging the Commission to reconsider its decision. Vitelco and the other parties argued that the 25/75 federal-to-state split for determining universal service support violated Section 254 of the Communications Act⁴ because it would not provide sufficient universal service funding. Vitelco also illustrated how the 25/75 approach would have had a devastating impact on the affordability of phone service in the U.S. Virgin Islands.

² 47 U.S.C. § 254.

³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (“*Universal Service Order*”).

⁴ 47 U.S.C. § 254.

In July of 1998, the Commission referred several issues to the Joint Board for its recommendations in response to these petitions and to the concerns raised by the state members of the Joint Board. The issues referred to the Joint Board included the 25/75 split, as well as, other issues, including how the federal policy should address changes in interstate access charges; how federal policy should support explicit support mechanisms at the state level; and how federal revenues should be collected (*i.e.* what revenue base to use). On November 25, 1998, the Joint Board released its *Second Recommended Decision* in response to the Commission's questions.⁵

After receiving additional comment on the *Second Recommended Decision*, the Commission released the *Seventh Report & Order and FNPRM*. In this Order, the Commission "explicitly reconsider[ed] and repudiat[ed]" the *Universal Service Order's* 25/75 split.⁶ Instead, the Commission recognized that states alone might not have the ability to fill any gaps that changes in funding might create so it adopted a policy whereby it would hold states harmless.⁷ That is, no carrier will receive less high-cost support under the new mechanisms than it currently receives. In order to implement this policy, the Commission adopted the Joint Board's two-step proposal.⁸ Under this system, the cost to provide service in a particular area will be compared to a national benchmark, then the state's ability to support its high cost areas will be determined. If

⁵ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Second Recommended Decision*, FCC 98J-7 (rel. Nov. 25, 1998) ("*Second Recommended Decision*").

⁶ *Seventh R&O and NPRM*, ¶ 3.

⁷ *See id.*, ¶ 68.

⁸ *Id.*, ¶ 61.

a state is unable to fully fund the amount of support needed “to achieve reasonable comparability of rates,” then federal support will be available to cover the difference.⁹ The present FNPRM seeks comment on the specific implementation issues concerning this framework.

II. DISCUSSION

A. The Situation in the U.S. Virgin Islands Highlights the Problems in Using a Generic Nationwide Methodology

1. The Commission must take particular care in establishing the national benchmark levels.

The Commission requested comment on the specific cost benchmark that it should adopt, in light of the fact that it has finalized the selection of a cost model.¹⁰ However, to the extent that the Commission would apply this figure to rural and insular carriers, Vitelco raises the following issues.

First, in its development of the national cost benchmark, the Commission must remain cognizant of the implications of the requirement found in Section 254 that there be “sufficient Federal and State mechanisms to preserve and advance universal service.”¹¹ This sufficiency requirement mandates that the Commission take particular care when it develops the national cost benchmark. Of particular importance here is that the Commission must ensure that it does not include in the national benchmark, costs for providing services that are not supported by universal service, such as vertical and access services. The impact of including such items, of course, would be to increase the cost benchmark by which support would be computed which, in

⁹ *Id.*, ¶ 66.

¹⁰ *Seventh R&O and FNPRM*, ¶ 96.

¹¹ 47 U.S.C. § 254(b)(5).

turn, would decrease the level of support available to carriers to provide those services actually supported by the universal service programs. In addition, the inclusion of these services in the cost structure would also result in the perpetuation of implicit subsidies that would be buried in the revenues for these services, which is in direct conflict with the 1996 Act.¹²

Second, any change in the national benchmark figure, to the extent that any changes will affect the level of support that the U.S.V.I. receives, will have an immediate impact on the telephone customers served by Vitelco. As will be illustrated in additional detail below, the combination of factors shaping the telecommunications market in the U.S.V.I. is unlike any other on the U.S. mainland. Given the lack of intrastate toll and minimal CMRS activity, any universal service funding contributed by the state authorities to make high-cost service affordable will actually come from the people who are supposed to benefit from universal service. The impact would be to make their service less affordable. As a result, any changes to the national benchmark figure will immediately impact the telecommunications customer living in the U.S.V.I. This, in turn, would threaten the affordability of telecommunications rates in the territory contrary to Section 254's dictates.

2. The size of the area over which costs should be averaged must take into consideration unique geographic features of an area and should not be used to limit the size of the fund.

Another critical component of the high-cost methodology is the size of the area over which costs should be measured and averaged. While the Joint Board in the *Second Recommended Decision* recommended that the study area be used,¹³ the Commission asked for

¹² 47 U.S.C. § 254.

¹³ *Second Recommended Decision*, 13 FCC Rcd at 24758.

comment on a number of different geographic area options including using (1) the wire center, (2) the unbundled network element zone, or (3) the study area.¹⁴ In its discussion of the different options, the FCC repeatedly raised the concern that the size of the area used “not significantly increase the size of the fund.”¹⁵

Vitelco takes no position on the geographic area used to determine costs for non-rural companies. Notwithstanding, Vitelco is concerned that using wire center level models, which estimate loop lengths based on geography, might not generate accurate figures in all cases. For example, in the case of the Virgin Islands, such models would likely fail to account for and capture the unusual geographic features that Vitelco faces in providing service in the U.S.V.I. As Vitelco has described in previous universal service proceedings,¹⁶ its service area presents unique geographic challenges that increase the cost of providing service in that service area. For instance, because part of the islands were formed from a volcano, the Islands are largely volcanic rock and their topography is irregular and mountain-like. This makes every aspect of the provision of telephone service including construction, ongoing maintenance, and access to outside plant extremely difficult. For example, steep terrain and volcanic rock require additional guying and anchoring. Additionally, costs on the Islands spiral upward because equipment that is used to link customers to the network must be routinely replaced due to the extreme weather conditions including heat, corrosive salt air and wind damage. Moreover, the geographic

¹⁴ *Seventh R&O and FNPRM*, ¶ 102.

¹⁵ *Seventh R&O and FNPRM*, ¶ 108.

¹⁶ *See Comments of Virgin Islands Telephone Corporation to the Federal-State Joint Board on Universal Service, Second Recommended Decision*, DA 98-2410 (filed Dec. 23, 1998).

features, particularly the mountains and bodies of water, separate population centers, further increasing costs. The fact that these unique factors have an effect on costs is reflected by the Congress' specific "addition of 'insular areas' to the list of consumers to whom access to telecommunications and information services should be provided."¹⁷

In fact, the accuracy of the forward-looking cost model remains a complete unknown with respect to insular areas due to another geographic characteristic of these areas – water. One problem with the model is that it estimates costs by distributing customers throughout an area using a theoretical construct in the absence of geocode data. In the case of the U.S.V.I., the model would likely place customers in the bodies of water separating the islands, thereby underestimating the real cost of providing service. Yet, the model has not been tested using data from the U.S. Virgin Islands, understandably, because the Commission is concentrating on non-rural carriers in this proceeding. However, it appears that the Commission has not yet tested the model with respect to another major insular territory which is served by a non-rural carrier – Puerto Rico.¹⁸ The Commission must not give in to the temptation merely to apply the model it adopts for non-rural carriers to rural carriers and ignore the special distinction Congress made for the latter.

Also, the Commission's goal for selecting the appropriate area to be used to determine the costs of providing service in a local area should not be driven by concerns for limiting the size of the fund to present levels. In the end, the Commission must remain true to one of the

¹⁷ H. Rept. No. 104-458, at 131 (1996).

¹⁸ See *Input FNPRM*, ¶ 31 (noting that the released road surrogate point data did not include Puerto Rico); see also *id.*, ¶ 33 (noting that "the new release [of geocode data] will include data for all fifty states, Washington, D.C., and Puerto Rico") (emphasis added).

central fundamental principles of the high-cost universal service program enacted into law by Congress and ensure that “[c]onsumers in all regions of the Nation ... have access to telecommunications and information services ... at rates that are reasonably comparable to rates charged for similar services in urban areas.”¹⁹ Thus, the Commission should determine the size of the area to be aggregated, not on what effect it will have on the overall size of the fund, but rather it should select the area that most appropriately provides the federal support needed to keep rates affordable.

3. The ability of the Territorial Government in the U.S.V.I. to support high-cost areas presents a unique situation requiring full federal funding.

The Commission requests comment on the specific details to implement the two-step process for determining federal support in a state. Under the proposed plan, the Commission has suggested that a fixed dollar amount per line be used to determine the level of state funding.²⁰ However, the relative number of lines in a jurisdiction does not inherently address a jurisdiction’s funding needs where high cost support exceeds that of other states. For instance, for some jurisdictions, like the U.S.V.I., nothing less than full federal funding at the current levels can ensure that customers in those jurisdictions will enjoy the reasonably comparable rates the Act requires.

One factor that an arbitrary fixed per-line state contribution figure ignores is the structure of a jurisdiction’s telecommunications market. For example, one peculiar problem that affects the ability of the U.S. Virgin Islands to self-fund universal service is that *no intrastate toll*

¹⁹ 47 U.S.C. § 254(b)(3).

²⁰ See *Seventh R&O and FNPRM*, ¶ 111.

*service exists in the territory to allow the territorial Commission to generate additional funding to subsidize high-cost local service.*²¹ Without this alternative source of funding, the only source of funds available to the territorial Commission to offset a reduction in the federal contribution is to raise the rates of the telephone subscribers of the Territory. However, the territorial Commission's ability to increase rates is further limited (in addition to the Islands' economic conditions discussed below) by the relatively small customer base of fewer than 70,000 local loops. This means that any required cost increase cannot be widely dispersed. Any increase would hit every ratepayer hard.

Another set of problems affecting the ability of the U.S.V.I. to self-fund ignored by the Commission's proposal are the economic conditions under which Vitelco provides service. The Islands' cost of living is thirty percent higher than the national average, and its tourism-based economy is declining. Further, nearly a quarter of the Islands' population live below the poverty line.²² Telephone service is difficult to maintain even for those above the poverty line because the average disposable income here is only sixty percent of that of the United States. Each of these conditions makes it extremely difficult for the territorial Commission to devise a means of collecting additional costs from internal sources.

²¹ The only other service of revenue would be to impose intrastate USF obligations on the small cellular and paging carriers operating on the Islands, which are not large enough to have an appreciable impact on USF contributions.

²² The 1990 U.S. Census reported that 23.2 percent of the people in the U.S. Virgin Islands live below the poverty line. 1990 Census of Population, Social and Economic Characteristics, Virgin Islands of the United States (1990 CP-2-55). In the mainland U.S., less than 14 percent of the population lives below the poverty line.

In short, the Commission's proposed "determination" of the U.S.V.I.'s ability to provide funding fails to account for the fact that, given the telecommunications structure in the Territory, any additional funding of universal service would come from the very same people who receive it. The small customer base and the lack of intrastate toll means that each dollar of reduced federal funding would result in a dollar of rate increases.²³ Even if only business rates are raised, given the insular nature of the territory and the non-export nature of the economic base, customers on the Islands would pay for any increase. The overall effect of this "transfer" is that the funds used to support universal service would be coming from the very people who were supposed to be receiving those funds. In essence, the citizens of the U.S. Virgin Islands would be robbing Peter to pay Paul. As a result, requiring the Virgin Islands to increase the level of state support to offset any reduction in federal universal service support would render telephone service unaffordable for many residents and have an adverse affect on subscribership levels, which are already significantly below (over 7% lower) that of the United States.²⁴ This impact must be considered in any determination of a state's ability to provide support to make rates affordable.

²³ The impact of such increases are further aggravated by the fact that rates in the Virgin Islands are already well above the national average. Residential rates in the U.S.V.I. average \$18.55 per month, 63% higher than the average rural rate (\$11.51) and 30% higher than the average *urban* rate (\$14.20). Business rates are no better. The business single line flat rate in the Virgin Islands is \$49.85 per month, which is *more than double* than the average rural rate (\$21.72) and 42% higher than the average *urban* rate. See Common Carrier Bureau, *Reference Book of Rates, Price Indices and Expenditures for Telephone Service* (June 1999).

²⁴ The United States enjoys telephone penetration rates of nearly 94 percent while the Virgin Islands has a penetration rate of approximately 87 percent. The Commission has noted that "subscribership levels provide relevant information regarding whether consumers have the means to subscribe to universal service and, thus, represent an important tool in evaluating the affordability of rates." *Universal Service Order*, 12 FCC Rcd at 8838.

B. The Commission's "Hold Harmless" Policy Must Ensure Carriers Receive Sufficient Support, Even if Support Is Ported to a Competitor

As mentioned above, the Commission adopted the Joint Board's recommendation to hold states harmless, *i.e.*, each state would receive at least as much support per line as it received under the old system. Vitelco applauds the Commission's decision and fully supports this policy. In order to flesh out this policy, the Commission requested comment on the relationship between the hold-harmless approach and the portability of support.²⁵ In short, portability must not interfere with the statutory requirement that the FCC provide sufficient support to carriers,²⁶ even if such support is not necessarily competitively neutral.

Without commenting on the specific amount that should be ported to a competitor, Vitelco stresses that it is important that the amount that is eventually ported does not hinder a carrier's ability to adequately recover the fixed costs it has expended to provide service to a particular location. In order to make rates affordable for all customers, it is vitally important that a carrier be guaranteed that it will recover the costs that it has expended to connect all customers to the network. Otherwise, the recovery of these fixed costs will be allocated to a smaller pool of subscribers, thereby increasing the cost of providing service to these remaining customers (and their rates). This is particularly true for Vitelco – a carrier with an obligation to serve all customers as a carrier of last resort and a carrier that faces geographic factors that make providing service within the Virgin Islands particularly costly. Further, given the fact that portability necessarily entails a reduction in support from one carrier and an increase in support

²⁵ *Seventh R&O and FNPRM*, ¶ 122.

²⁶ 47 U.S.C. § 254(b)(5).

to another, it is critical that the original level of support be accurate and adequate to cover both fixed and variable costs.

In addition, Vitelco stresses that portability should not necessarily affect the amount of support that an incumbent LEC receive. At a minimum, the incumbent LEC should always receive the same amount of *per line* support that it originally received in accordance with the number of lines it services. This fact should be true even if the total amount of support provided overall would increase. A simple example illustrates this point. Suppose CLEC acquires a totally new customer, who has a line that qualifies for high cost support. A CLEC would obviously receive high cost support. However, because the number of ILEC high support lines have not changed, the ILEC should continue to receive support *at the same amount of per line support it has always received*. The fact that the net effect would be for the overall size of the fund to increase (by one new customer) should not deter the Commission from guaranteeing that sufficient support is available for all lines that qualify for it.

C. The Commission Should Delay Any Decision on Adjusting Interstate Access Charges in Response to Universal Service Funding Changes

In the *Seventh R&O and FNPRM*, the Commission makes several tentative conclusions that would tie the amount of explicit federal high-cost support received by a carrier to the rates that they charge their customers, either directly or through an adjustment of the formulas they use to calculate their rates.²⁷ Any attempt at this time to develop policy in this area is grossly premature. First, the cost models upon which the Commission has based its tentative conclusions have not been tested with respect to rural carriers (and certainly have not been run

²⁷ *Seventh R&O and FNPRM*, ¶¶ 130-34.

with data from the Virgin Islands). Second, the proceeding, examining the entire issue of access charges in the rural context, is still open. The Commission must first decide its policy with respect to access charges before it can then examine how it will link access charges and universal service. Acting prematurely to apply a policy that would require rural carriers to offset access charges with universal service support amounts could very well impede the goal of universal service to make rates affordable for all Americans.

III. CONCLUSION

In conclusion, Vitelco applauds the Commission's rejection of a rigid standard by which to determine the amount and size of federal support. The 25/75 policy was not one that could have fulfilled the statutory obligation of the Commission to provide sufficient support to customers in high cost areas, particularly those in Vitelco's service area, which face unusual circumstances that a fixed rule could never hope to capture. However, the adoption of a flexible policy also has its share of potential pitfalls and increases the opportunities for slipping away from the statutory mandates of Congress. Thus, Vitelco cautions the Commission to remain

vigilant and keep its eye on the goal of ensuring that all customers in all regions of this country enjoy affordable, reasonably priced telecommunications services now and in the future.

Respectfully submitted,

VIRGIN ISLANDS TELEPHONE CORPORATION

By: Samuel E. Ebbesen *10.9.*

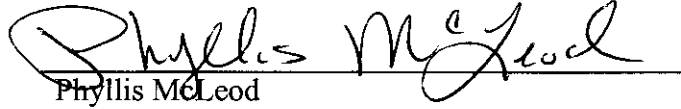
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